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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,454	10/30/2003	Richard W. Newman	281-317	7977
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Hiscock & Barelay, LLP One Park Place 300 South State Street Syracuse, NY 13202-2078				
EXAMINER				
THOMAS, BRANDIN				
ART UNIT		PAPER NUMBER		
2873				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/697,454

**Applicant(s)**

NEWMAN ET AL.

**Examiner**

BRANDI N. THOMAS

**Art Unit**

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-99 is/are pending in the application.
- 4a) Of the above claim(s) 3,8-11,17,18,20-22,24-91 and 93-99 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,12-16,19,23 and 92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Detailed Action

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-7, 12-16, 19, 23, and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohla et al. (7237898 B1) in view of Febbronello (7166079).

Regarding claim 1, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, said apparatus comprising: at least one imager (108 and 110) for imaging at least a portion of an eye (E) of a patient (col. 21, lines 12-15), said at least one imager (108 and 110) configured to provide image data comprising at least two data types (118, 120, 130, and 132) selected from the group consisting of data from ophthalmic images using confocal microscopy data, retinal polarimetry data, optical coherence topography data, thermal image data, spectroscopic image data, refractometry data, and visible image data (col. 21, lines 12-17 and 30-34); and a data analysis module that interrelates data from said at least two data types to provide an interpretive result (col. 22, lines 49-57) but does not specifically disclose results that it is indicative of a presence of an abnormality that appears to involve a retinal portion of the eye, and where said abnormality could actually involve, at least in part, a diseased portion of the brain. Febbronello discloses results that is indicative of a presence of an abnormality that appears to involve a retinal portion of the eye, and where said abnormality

could actually involve, at least in part, a diseased portion of the brain (col. 3, lines 46-54).

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the device of Hohla et al. with the Febbronello et al. for the purpose of early or pre-clinical diagnosis (col. 3, lines 46-54).

Regarding claim 2, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, further comprising a display module (104) that provides a display of interrelated data to a user (col. 23, lines 29-36).

Regarding claim 4, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, further comprising a data output module that reports said interrelated data from said at least two data types (118, 120, 130, and 132) (col. 24, lines 1-5).

Regarding claim 5, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, further comprising a report module (106) that reports said interpretive result (col. 24, lines 16-18).

Regarding claim 6, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, further comprising a single output module that reports said interrelated data from said at least two data types (118, 120, 130, and 132) and said interpretive result (col. 24, lines 1-5).

Regarding claim 7, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, further comprising a superposition module (156) for superimposing data obtained from at least two images (col. 24, lines 31-33).

Regarding claim 12, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, further comprising a display (260) for displaying said superimposed data obtained from at least two images (col. 27, lines 23-25).

Regarding claim 13, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, wherein said superimposed data obtained from at least two images comprises data obtained from at least two different data types (118, 120, 130, and 132) selected from the group consisting of data from ophthalmic images using confocal microscopy data, retinal polarimetry data, optical coherence topography data, thermal image data, spectroscopic image data, and visible image data (col. 21, lines 12-17 and 30-34).

Regarding claims 14 and 15, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, further comprising a memory for storing image data (col. 23, lines 42-45).

Regarding claim 16, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye but does not specifically disclose where said applied stress is selected from the group consisting of intra ocular pressure variation, blood pressure variation, oxygen concentration variation, exercise, flashing light, drug administration, administration of insulin, and administration of glucose. It is inherent that applied stress would fall under one of the above categories this being reasonably based upon they are medically proven to apply stress to the body.

Regarding claim 19, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, wherein said memory for storing image data is configured to archivally store image data (col. 25, lines 52-55).

Regarding claim 23, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, wherein said data analysis module is configured to automatically determine a presence of an abnormality (col. 22, lines 49-61).

Regarding claim 92, Hohla et al. discloses, in figures 7A-7C, an apparatus for performing multiple procedures involving the eye, performing an examination of a patient using the apparatus of claim; treating said patient based at least in part on a result obtained from said examination (col. 24, lines 1-5).

#### *Response to Arguments*

3. Applicant's arguments with respect to claims 1-7, 12-16, 19, 23, and 92 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI N. THOMAS whose telephone number is (571)272-2341. The examiner can normally be reached on Monday - Thursday from 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandi N Thomas/  
Examiner  
Art Unit 2873

BNT  
June 4, 2008

/Ricky L. Mack/  
Supervisory Patent Examiner, Art Unit 2873